IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 1819 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 19/11/2004 in WP.No: 20378 of 2004 on the file of the High Court.)

Between:

M/s. Ramky Infrastructures Limited (Wrongly shown as Ramkey Company Limited) Rep. by its Authorised Representative, S. Chakradhar, S/o. S.P. Reddanna, aged about 35 Years, Ramky House,
Gulmohar Avenue, Rajbhavan Road, Somajiguda, Hyderabad.

..... APPELLANT

AND

1 Sri Lakshmi Metal Industries and Constructions, Special Class Contractors Specialist in Asphalat Roads by Hot Mix Process, 12-13-23, Street No.5, Tarnaka, Secunderabad Rep. by Managing Partners, B. Venkat Reddy,
S/o. Ganga Reddy, R/o. Hyderabad.
2 The Commissionerate of Tenders, B.R.K.R. Bhavan, Hyderabad.
3 Chief Engineer (R&B) Erra Manzil, Hyderabad.
4 Superintending Engineer (R&B), Head Quarters Circle, Erra Manzil, Hyderabad.

.....RESPONDENTS

Counsel for the Appellant: MR.V.VENKATARAMANA

Counsel for Respondent No.1: MR.K.RAGHUVEER REDDY

Counsel for Respondent Nos: 2 to 4: G.P. FOR ROADS AND BUILDINGS

THE COURT MADE THE FOLLOWING JUDGMENT: (per Hon'ble Sri Devinder Gupta, the Chief Justice)

Fourth respondent in the writ petition is the appellant and is aggrieved by the order of the learned single Judge allowing the writ petition of Respondent No.1. While allowing the writ petition, the learned single Judge directed the fourth respondent (Respondent No.3 in the Writ Petition) to examine the letter dated 26.10.2004 received from the Superintending Engineer (Electrical), CPWD and if the clarification satisfies the condition of the tender, to accept the technical bid of the writ petitioner/respondent No.1 and on acceptance thereof to open its price bid and forward the same to the third respondent herein for consideration along with the price bid of the appellant and to take appropriate decision thereupon in terms of the tender notice.

2. Fourth respondent issued tender notice dated 7.9.2004 for execution of the work of development of new internal roads, footpaths, parking, landscaping and providing MS grill etc., in A.P. Secretariat, Hyderabad. Bidders were required to offer technical bids and price bids. Technical bid was required to be opened on 1.10.2004 but the date was postponed and it was opened on 25.10.2004. Besides the appellant and the first respondent, two others participated in the tender. Instead of evaluating the technical bids forthwith, the fourth respondent postponed the same to the next day and asked the writ petitioner/respondent No. 1 to furnish year-wise break up particulars of electrical experience certificate from the concerned authority for which purpose the fourth respondent handed over a letter to the writ petitioner/respondent No. 1 addressed to the Superintending Engineer (Electrical) CPWD, Hyderabad to confirm the genuineness of the certificate produced by the writ petitioner and also to furnish the financial year breakup. Clarification was required to be submitted before 3 P.M., on 26.10.2004. Writ petitioner having failed to furnish necessary clarification before 3 P.M., on 26.10.2004, the Superintending Engineer opened the price bids of the three other participants and based upon the technical bid evaluation forwarded the same to the third respondent. At that stage, the writ petitioner filed the writ

petition seeking direction to declare the action of the fourth respondent herein in not opening his price bid pursuant to the tender notice with consequential directions to the fourth respondent to open the price bid and submit the same to the third respondent and ultimately to the second respondent for grant of work mentioned in the tender notice.

3. Learned single Judge proceeded to allow the writ petition holding that there was no fairness or reasonableness in the action of the fourth respondent while dealing with the technical bids and price bids and there was arbitrariness on the part of the fourth respondent in not opening the price bid of the writ petitioner after receipt of clarification. Further holding that bias was shown in favour of the appellant herein, writ petition was allowed with direction to accept the clarification and open the technical bid of the writ petitioner.

4. We have heard counsel for the parties. Having considered the submissions made before us, we are of the view that the order of the learned single Judge is not sustainable in law.

5. Admittedly, as per the tender notice only the eligible bidders could offer their bids. Eligibility condition required certificates to be furnished as per the proforma available in the tender schedule. One of the certificates required to be appended to the bid, as an essential clarification, was that the contractor or his identified sub-contractor should possess required valid electrical licence and registration for executing the electrification work and should have executed similar electrical works totaling Rs. 6.75 lakhs in any one financial year during last five financial years.

6. Bidder was also required to submit particulars in the format specified in the tender schedule along with necessary certificates and it was specifically made clear that failure to submit the particulars, the tender shall be treated incomplete and will be summarily rejected. Admittedly, the writ petitioner had appended to the bid documents an experience certificate of its sub-contractor M/s. Universal Engineering Company to the effect that it had the requisite valid electrical licence and registration and had executed two works of value of Rs. 2009005/- and Rs. 2297620/- covered in financial years 7.7.1997 to 10.9.1999 (3 years) and 7.2.2000 to 4.1.2001 (two years) respectively. The certificate did not specify the amount of work executed in any one financial year during the last five years to satisfy the tender condition.

7. Thus, the certificate submitted by the writ petitioner was not in order and lacked

essential and material particulars as per the tender notice of having executed similar electrical works totaling Rs. 6.75 lakhs in any one financial year during the last five financial years. Certificate not fulfilling this condition, obviously, had to be treated as non-compliance with the bid conditions or in other words it had to be taken as if the writ petitioner though had submitted a certificate that its sub-contractor possessed required valid electrical licence and registration for executing electrical works but had failed to specify the fact of having executed similar electrical works totaling Rs. 6.75 lakhs in any one financial year during the last five financial years. Instead of rejecting the tender of the writ petitioner, as envisaged under the conditions, the fourth respondent of its own sought a clarification. In other words, fourth respondent permitted the writ petitioner to fill in the lacunae found in the technical bid of not mentioning an essential and material fact of having executed similar electrical works totaling Rs. 6.75 lakhs in any one financial year during the last five financial years. The question, thus, before the learned single Judge was, whether it was within the jurisdiction of the Superintending Engineer to have sought clarification and postponed the evaluation of the technical bids till clarification was received. In other words, whether the fourth respondent, after last date of submission of tender documents and after the technical bids were opened, could have permitted the writ petitioner to correct its certificate by obtaining clarification? Learned counsel for the writ petitioner would submit that it was within the jurisdiction of the tender opening authority to call upon any tenderer for clarification as provided under Clause 22.1 of the Standard Bid Documents, which says:

> "The tender opening authority may call upon any tenderer for clarification on the statements, documentary proof relating to the technical bid. The request for clarification and response thereto shall be in writing and it shall be only on the qualification information furnished by the tenderer in Cover "A". The clarification called for from the tenderers shall be furnished within the stipulated time, which shall not be more than a week."

8**.** Learned counsel for the appellant submits that it was not permissible for the Superintending Engineer to have sought any clarification or extended time for evaluating the technical bids and the writ petitioner's tender bid ought to have been rejected.

9. In so far as the scope of judicial review in tender matters is concerned, it is very limited as has rightly been noticed by the learned single Judge following **TATA CELLULAR v. UNION OF INDIA** that the Court has to confine itself to the question

of legality and its concern should be (i) whether the decision making authority exceeded its powers, (ii) committed an error of law; (iii) committed a breach of the rules of natural justice; (iv) reached a decision which no reasonable Tribunal would have reached; or (v) abused its powers.

10. The question is, whether Clause 22.1 of the Standard Bid Document authorizes the Superintending Engineer to permit a clarification to be made as regards the essential qualification, which is lacking in the certificate furnished, in the absence of which, the technical bid is liable to be rejected. On a reading of the Clause, our answer would be in the negative that there is no such authority or jurisdiction to call for a clarification on the essential requirement of the certificates. The details and the certificates to be furnished as per the proforma available in the tender schedule in the bid documents are condition precedent, which, inter alia, required the bidder to append a certificate that either he or his sub-contractor possess valid electrical licence and registration and also a certificate of having executed the requisite electrical works of similar nature of the value mentioned therein in any one financial year during the last five financial years. A certificate not mentioning the value of work in any one particular financial year and certification mentioning the work carried out in two or three financial years jointly would not meet the requirement and, as per the conditions, the same is liable to rejected forthwith. Clarification that can be sought under Clause 22.1 would be such other information which is not a material or essential condition in the statements or documentary proof relating to technical bid. Clause 22.1 does not give authority to fill in the lacunae. In a case in which material particulars are otherwise mentioned, as are required to be mentioned, only on those particulars, a clarification can be sought, but, not in a case where the bidder has not furnished the requisite certificate that clarification could have been sought to make an invalid certificate a valid certificate.

11. The Supreme Court in **W.B. State Electricity Board v. Patel Engineering Co.,** held that negligent mistake in bid documents cannot be permitted to be corrected even on the basis of equity. The Supreme Court also held that strict adherence to instructions to bidders is essential and cannot be given a go-bye and equity has no role to play in such like cases. In the case before the Supreme Court, Clauses 27 and 29 of the Bid Document therein dealt with clarification of bids and correction of errors. The Supreme Court turned down similar argument that even if

there is power vested to seek clarification and permit correction; such permission to carry out correction cannot be accorded on equitable basis in essential facts. It was held that it is essential to maintain sanctity and integrity of the process of tender and also award of contract. Relying on the ratio of the decision of Supreme Court, we are of the view that the respondents are bound by the conditions and the bid conditions ought to have been complied with scrupulously; otherwise non-adherence to the instructions would encourage and provide scope for discrimination, arbitrariness and favouritism, which are totally opposed to rule of law. The very purpose of issuing instructions is to ensure their enforcement; lest the rule of law would be a casualty. The action of the fourth respondent in seeking clarification itself being bad in law, the writ petition ought to have been dismissed and no direction could have been issued by the learned single Judge for evaluating the price bid of the writ petitioner, since its technical bid did not meet the essential eligibility criteria.

12. The writ appeal is allowed, the impugned order is set aside and the writ petition is dismissed. No order as to costs.

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DEVINDER GUPTA, CJ

23rd November, 2004

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M. NARAYANA REDDY, J

Sarfraz/vtv

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   S/o. Ganga Reddy, R/o. Hyderabad.

4. The Commissionerate of Tenders, B.R.K.R. Bhavan, Hyderabad.

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